

TESTIMONY BEFORE THE HOUSE COMMITTEE ON FAMILIES, CHILDREN, AND SENIORS
ON BEHALF OF THE MICHIGAN PROBATE JUDGES ASSOCIATION

Hon. Lisa Sullivan, Clinton County Probate and Family Division Judge

February 6, 2013

Good afternoon. My name is Lisa Sullivan. I am the Probate Judge in Clinton County, and I am here representing the Michigan Probate Judges Association (MPJA). I have been asked by your staff to discuss voluntary releases given as part of the adoption process. Therefore, my remarks will be focused on those cases, rather than adoptions through foster care, but I am certainly happy to take any questions you have.

Before an adoption can be finalized, the child has to be freed for adoption. Freeing the child requires terminating the biological parents' rights. The identity of the biological mother is rarely an issue. The identity of the biological father can be more complicated. In order to determine the appropriate procedure to terminate a father's parental rights, the first step is to determine whether the man can be identified. Next, can that man be found, and finally, what is his status as a father. In Michigan, paternity can be established by signing an Acknowledgement of Parentage or by obtaining a court order. (Signing a birth certificate is insufficient to establish paternity.) If paternity is established, the father is considered a **legal** father and has the right to custody and parenting time with his child. If paternity has not been established, the father is considered a **putative** (possible) father. Although he may have the right to notice of certain proceedings, he does not have a right to custody or parenting time with the child. Nevertheless, for purposes of adoption, even a putative father's rights must be terminated.

In private adoptions, terminations can be done by a **consent**, a **release**, or an evidentiary **hearing**. A **consent** is when a parent voluntarily agrees to the termination of his or her rights in order to facilitate a specific adoption. A **release** occurs when a parent voluntarily relinquishes his or her parental rights to DHS or a private agency in order to facilitate an adoption.

Once a parent executes a consent or a release, an order must immediately be entered, terminating their parental rights. However, under both procedures, a parent can request a revocation of the release within 21 days of an order terminating parental rights. If the court allows a rehearing, there is a 21 day appeal period after the decision to allow or deny the request; however, if a request for revocation is not made within the 21 days, the court has no jurisdiction to hear such requests. Case law clearly supports denying revocation of a release or consent when it is merely based on a parent changing his or her mind. Rather, revocations are usually only granted when the adoption process is abandoned, e.g., the adopting family changes its mind or the biological father seeks custody. Assuming the adoption process continues after a release or consent, there is a 6-month waiting period before the adoption can be finalized. So, the 21-day periods do not delay the proceedings beyond other time constraints.

Generally, finalization does not need to exceed the 6-month waiting period; however, there may be other factors that delay final proceedings. For instance, there may be prior CPS history with the adopting family, or there may be marital problems, or there may be some concerns raised by a reference about the appropriateness of the home. Absent these circumstances, there is an anxiousness to complete the adoption as soon as possible, but the overriding concern is the best permanency decision for a child. For private adoptions, success depends, in part, on the biological parents' ability to live with their decisions. Even though biological parents may be willing to consider adoptive placement of their child, it is important that they are comfortable with the process and feel respected for their decisions. That means, in part, faster isn't always better.

Although parents will voluntarily agree to the termination of their parental rights in these adoptions, this choice is very emotional and difficult. In fact, that is why current law requires adopting parents to pay for counseling for a biological parent unless the biological parent specifically waives counseling. Beyond the counseling, however, it is important to examine the language used when discussing biological parents. Those parents who proceed through a voluntary process are not "giving up" their children. They are actually making plans for them – choosing what is best for their children over their own needs and wants. Therefore, some thoughtfulness to the process can go a long way toward ensuring that all parties involved support the same permanency plan.

If a release or consent cannot be secured in a private adoption proceeding, then an evidentiary hearing is required to terminate parental rights. In most cases, this necessity usually means the biological father must be identified and/or his interest in maintaining custody must be ascertained in order to determine whether his rights can be terminated. In essence, there are three processes to achieve this goal.

First, if the identity or whereabouts of the putative father are unknown, the court must determine if:

1. "Reasonable" efforts have been made to identify and locate the father, AND
2. The putative father, whose identity is not known, has not made provisions for the child's care and did not provide support for the mother during her pregnancy OR the putative father whose identity is known (but whereabouts are unknown) has not provided support for the mother, has not shown any interest in the child, and has not made provisions for the child's care for at least 90 days preceding the hearing; AND
3. That nobody other than the identified putative father could be the child's biological father.

In this day and age of technology, the "reasonable efforts" requirement does not have to create a delay to the proceedings. A mother or agency can file a court form – A Declaration of Inability to Identify/Locate Father – which is an affidavit, attesting to the attempts that have been made to identify and locate the man, thought to be the biological father through friends, relatives, social media, last known addresses, phone book, white pages, or other internet searches. These efforts are important to the adoption process to rule out barriers to freeing the child for adoption. Although an idealist may suggest that a possible father should have followed up with a person with whom he had been intimate

in order to determine whether she was pregnant, the woman may not have made herself available for follow-up and, in fact, may have concealed her pregnancy from the father. Similarly, exclusion of other possible fathers often involves some brief testimony from the mother at a hearing.

Second, if the identity and the whereabouts of the putative father are known, a court is required to make the following findings:

1. If the putative father is at the hearing and requests custody, but the court finds there is no custodial relationship and he has provided no support, his parental rights may be terminated; OR
2. If the putative father has established a custodial relationship or provided support within 90 days of the hearing, then his rights cannot be terminated unless the adoption is a step parent adoption AND satisfies the criteria the conditions that apply to non-custodial, legal fathers, set forth below.

Third, if there is a non-custodial, **legal** father, his rights may only be terminated if:

1. He has had the ability to have contact or communicate with the child and has failed to do so regularly and substantially for the 2 years prior to the filing of an adoption petition; AND
2. He has failed to support or comply with a support order regularly and substantially for the 2 years prior to the filing of the adoption petition

There are many biological fathers who truly want to raise their children although the children resulted from short-term relationships. These requirements are important to prevent later disruptions to an adoptive placement. The current statutory scheme balances due process protections for fathers against the need for timely finalizations.

Finally one other means of voluntarily terminating parental rights (outside of the foster care process) is through the Safe Delivery of Newborns Act, which regulates a parent's surrender of a newborn child. The Safe Delivery of Newborns Law permits a parent to leave a newborn with an emergency service provider without expressing any intent of returning for the newborn. The newborn will eventually be placed with a child placing agency. The courts then have the authority to presume the parents have knowingly released their rights and enter orders terminating parental rights.

There is a provision in the Act, which provides that a parent who surrenders custody of a newborn may request custody of the newborn if s/he files a petition for custody within 28 days after the newborn was surrendered. A non-surrendering parent may request custody of the newborn if s/he files a petition for custody within 28 days after notice of the surrender was published. In those instances, the court must hold a hearing within 7 days to determine the newborn's biological parents. Custody proceedings would be held after parental determination.

However, if either parent fails to file a petition for custody within the 28 day periods, the child placing agency must immediately petition the court to determine whether the court will terminate the parental rights. The court must schedule a hearing within 14 days of receiving the child placing agency's petition and must terminate parental rights if the agency shows that no custody petition has been filed,

that there have been reasonable efforts to identify and locate the non-surrendering parent, and that the surrendering parent has voluntarily relinquished his/her parental rights.

Thank you for allowing MPJA to participate in this hearing. I hope this summary has answered some of your questions about the voluntary termination of parental rights. I would be happy to answer any questions you have.